IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7753 OF 2006

Vitthal Dattaram Phansekar Petitioner
versus
The State of Maharashtra & ors. Respondents

Mr.R.M.Kolge for petitioner.
Mr.R.M.Patne, AGP for respondents.

CORAM : F.I.REBELLO AND
R.V.MORE, JJ.

DATE : 12th January 2007

PC :

1. Heard. The main contention as urged by the petitioner before us challenging the order of the Maharashtra Administrative Tribunal, is in respect of seniority allotted to respondent no.3. It is the case of the petitioner based on Exhibit-G that insofar as he is concerned, on the merit list of Assistants selected in the year 1992, he was at serial number 29 and Shri Pagare was at serial number 41. The learned counsel relies upon Sub Rule 2 of Rule 5 of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. That reads as under:-

> "5. Assignment of deemed dates of appointment:-
>
> (1) ... ...
>
> (2) Where the direct recruits selected in the same batch report for duty on different dates and the actual dates on which they are appointed are not chronologically in conformity with their inter se seniority as provided in clause (a) of sub-rule (2) of rule 4, the recruit higher in rank but reporting for duty later than his junior shall be assigned, as deemed date of appointment, the date on which the recruit lower in rank reports for duty, provided the recruit higher in rank reported for duty within the period of thirty days from the date of his appointment or within such further period as may be extended by the competent authority."

2. A perusal of that Rule would make it clear that a direct recruit must join duty within a period of thirty days from the date of his appointment or within such further period as may be extended by the competent authority. From the impugned order of the Tribunal it is apparent that the petitioner was granted extension of time beyond thirty days to join the post. The first extension was by letter dated 3rd September 1993 when time was granted to him to join the post on or before 23rd March 1993, with a rider that his seniority would be considered from the date he resumes the duties. The petitioner did not join

but sought another extension by application of 23rd September 1993. That was accepted and he was granted time to join the post on or before 12th October 1993. In this letter of extension also the petitioner was informed that his seniority would be reckoned from the date of his joining his duty. From the seniority list, which is annexed, it is clear that respondent no.3 joined on 2nd September 1993 whereas the petitioner joined on 11th October 1993. The contention advanced on behalf of the petitioner by his learned counsel is that the action of the appointing authority in directing that his seniority would not be counted, is without authority of law and as such cannot be taken into consideration.

3. We have heard the learned counsel and considered the arguments. If Rule 5(2) is construed in its proper context, the seniority for direct recruits who is more meritorious, in the event he joins the duties subsequent to his junior, provided extension was given by the competent authority, has to be given a deemed date and as such would be ranked above his junior. In the instant case, the appointing authority extended time to the petitioner to join

his duties but with a rider that insofar as seniority is concerned, his seniority would be counted from the date when he joins duty. The only question is whether the appointing authority could impost such a condition. It is not possible to accept the contention of the petitioner that there was no such power in the appointing authority. The appointing authority could have chosen not to extend the time to join and if such an eventuality happened, the petitioner could not have contended that such action is arbitrary. If however, the petitioner had joined within thirty days of the letter of appointment, then any condition about seniority for that period would be be of no consequence as the rule itself provides for time for joining. It was, therefore, open to the appointing authority to grant extension beyond this period including a condition that the seniority would be counted on the date of joinining. We do not find this action to be arbitrary, whether under the Rules or under Articles 14 or 16 of the Constitution of India. That contention, therefore, must be rejected.

4. Learned counsel then points out that he has also a grievance insofar as those listed at

serial numbers 692 to 699. They were not parties before the Tribunal. The learned counsel contends that this Court should consider the said contention. There is a final seniority list which has been published. If it is the case of the petitioner that any person junior to him has been placed above the petitioner in the seniority, then it was incumbent on the petitioner to join such persons as respondents in the Original Application as they were necessary parties. A Writ Court will not interfere with the order of seniority without due opportunity being given to the persons likely to be affected. In the instance case, the persons at sr.nos.692 to 699 are not parties before us. Hence, it is not possible to consider that argument at this stage. In the light of that the petition is rejected.

(R.V.MORE, J.) (F.I.REBELLO, J.)